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JANUARY 2002

LABOR ALERT

Subject: Enforcement Policy re: "Second" Jobs

This issue is to clarify the Bureau's enforcement policy regarding the application of the migrant labor law to an individual who seeks work at a food processing business while he or she is already employed by another employer. The migrant law status of the employee in a "second job" at a food processing facility will depend on the reason that the employee has come to Wisconsin.

The state migrant labor law (sec. 103.90(5), Stats.) defines "migrant worker" as:

"...any person who temporarily leaves a principal place of residence outside of this state and comes to this state for not more than 10 months in a year to accept seasonal employment in the planting, cultivating, raising, harvesting, handling, drying, packing, packaging, processing, freezing, grading or storing of any agricultural or horticultural commodity in its unmanufactured state."

The key components of the statutory definition are whether and why a person has come to Wisconsin for employment. A person may travel from out of state to take a job in Wisconsin, but if that job is not in one of the fields listed in the statute the person is not a "migrant worker." Then, if the same person takes a second job in a food processing business, the "migrant worker" definition will still not apply because the food processing employment is not the reason that the employee came to Wisconsin.

The opposite result will occur if the primary job is covered by the state migrant labor law. A person who has already come to this state for the purpose of accepting seasonal employment in the areas described by the statutory definition will continue to be covered by the definition in a second job with a food processing employer.

Procedure: The Bureau of Migrant Services should continue to operate on the presumption that the state migrant law applies to every person who has come to Wisconsin from out of state and who has accepted covered agricultural employment. An employer may rebut this presumption by providing evidence that a worker left his or her home state with the intention of accepting nonagricultural employment. Examples of such evidence include a letter or notarized statement from a nonagricultural employer or a contract with a nonagricultural employer.

Should you have any questions, please call Mateo Cadena at (608) 266-0002.